AF/1600

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR PATENTS, BOX AF, WASHINGTON, D.C. ON THIS 25TH DAY OF JUNE, 2002.

BY Richard M. Bell

M-1492 (6247*1)

#19
AHD
7-16-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

DIETER MÜLLER	:	
SERIAL NO. 09/214,047	:	**GROUP ART UNIT: 1619**
FILED: JULY 12, 1999	:	**EXAMINER: S. SHARAREH**
FOR: PHARMACEUTICAL ADMINISTRATION FORM	:	

Assistant Commissioner for Patents
Box AF
Washington, D.C. 20231

Sir:

APPEAL BRIEF

REAL PARTY IN INTEREST

The real party in interest is the appellant, Dieter Müller.

RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1 and 3-5 are pending in this application and stand rejected. These claims constitute the claims on appeal.

STATUS OF AMENDMENTS

No response was filed subsequent to the final Office Action of July 17, 2001. A copy of all claims under appeal is attached as an Appendix to this Appeal Brief.

SUMMARY OF THE INVENTION

Pharmaceutical medical compounds in their molecular form are traditionally administered to patients through body apertures and the pores of the skin or via syringe directly into the blood vessels (specification, page 1, lines 6-9). The present invention departs from traditional administration techniques in that the medical compound is not administered to the patient in its physical form, but instead by storing the bioresonance spectrum of the medical compound in an electromagnetic memory and applying that memory to the body of a patient. Receptors at the cell and nuclear membranes of the patient receive the bioresonance spectrum and thereby start metabolism processes within the patient (specification, page 2, lines 8-15).

The human body has a high quality system of resonators where different conditions of resonance exist within the range of a few Hz to 150 Hz. This resonator system of the body attenuates in view of high quality received signals only on a very small scale and passes them on nearly undattenuated. The resonance system presumably consists of a plurality of parallel-switched resonators which are composed of cell and nuclear membranes. The signal is forwarded via a multi-channel system which is composed of nerve tracts, meridians and the protein chains of body tissue. By means of this transmission system the organism is in a position to receive ultra-fine signals because of

its highly sensitive resonators and to transmit same via a nearly unattenuated conducting path to the respective receptors in the body (specification, page 4, lines 6-16).

THE ISSUES

The issues presented for appeal are as follows.

1. Whether or not claims 1 and 3-5 are proper under 35 USC §112, second paragraph.

2. Whether or not claims 1 and 3-5 are proper under 35 USC §112, first paragraph.

3. Whether claim 1 is patentable or unpatentable under 35 USC §102(b) as anticipated by Berner et al DE 3419055 (hereinafter "Berner").

4. Whether claims 1, 3 and 5 are patentable or unpatentable as anticipated by Whitson-Fischman US 5,162,037.

5. Whether claims 1 and 3-5 are patentable or unpatentable under 35 USC §102(e) as anticipated by Dillinger et al US 5,830,140 (hereinafter "Dillinger).

GROUPING OF CLAIMS

For purposes of this appeal each of claims 1 and 3-5 should be separately considered on the merits with respect to the issues under 35 USC §102, 112.

ARGUMENT

In support of patentability, appellant submits the following.

Issues Re 35 USC §112, Second Paragraph

Appellant respectfully submits that claim 1 is improperly rejected due to the Examiner's misinterpretation of the expression "pharmaceutical administration form" as a dosage form. Such conclusion is not correct. Moreover, the preamble of claim 1 recites a pharmaceutical administration form while the balance of claim 1 recites the metes and bounds of that form.

Further, the Examiner states that the definition of "bioresonance spectrum" on page 2 of the specification is ambiguous. Appellant respectfully submits that while a definition of the wording is found on page 2, an extensive explanation which additionally enables one skilled in the art how to record the respective spectrum is found on page 5, particularly the last paragraph of that page.

Although the expression "skin well-tolerated adhesive tape" is deemed vague by the Examiner, appellant respectfully submits that the scope of this expression is sufficiently clear. In response to a specification of this type, a skilled artisan such as a medical doctor or nurse, for example, might use a band-aid or a plaster or something alike to adhere the magnetic strip to the body. Such tape may be anything adhesive that is tolerated by the skin.

The "predetermined factor" and "predetermined amplification" pertain to the dosage of the medication. They depend first on the medication used, but self-evidently further on the disease, the patent and other circumstances. No specific range need be given. The amplification should be determined appropriately in every specific case as with

conventional medication, but without undue experimentation. It is believed that these expressions are self explanatory and well understood by persons of ordinary skill in the art.

Claim 5 is rejected because it does not recite the type of disease being treated. Appellant believes it is quite clear that the administrative form is being claimed as well as the use of such particular administration form for the treatment of virtually any disease for which a conventional medication exists whose bioresonance spectrum can be recorded. Any extensive list of medications is described in the specification.

Issues Re 35 USC §112, First Paragraph

With respect to the rejection of the claims under 35 USC §112, first paragraph, appellant respectfully disagrees with the Examiner's conclusion that the claimed subject matter was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

First, the Examiner states that the prior art concerning bioresonance therapy is controversial and that pharmacological effects have not been described by scientific methodologies. The Examiner concludes therefrom that the specification does not provide adequate enablement for the therapeutic utility. The respective logic is not clear to appellant, and it appears the Examiner is improperly weaving his personal beliefs into the support for the rejection. The assumption that pharmacological effects have not been described before proves even more the inventiveness of the claims of this application. An expert who reads the present specification will be in the position to repeat the teaching of the present invention by studying page 5 of the specification in connection with the

example 1 disclosed on page 27, since the entire apparatus and its operation as well as the measurement of the resonance-signals are disclosed in detail. On page 6 explicitly discloses how to apply the magnetic tape itself, e.g., how and where to adhere the tape to the body. The basis of why and how the present invention works is explained on pages 3 through 5. In short it must be understood that the human body avails of a high-quality system of resonators. In any body occurs a physiological electromagnetic vibration condition. Disturbance of that results in diseased states. Bioresonance therapy as defined in the present specification aims at the equilibration of the physiological vibrations through attenuation or quenching of pathological vibrations by means of interference with electro-magnetical vibrations from outside of the body. It has already been stated on page 3, paragraph 3 of the specification that the exact biophysical bases underlying the bioresonance are mostly unexplored. Therefore, no detailed mechanism of action can be provided at the present time, but such is not a prerequisite for seeking protection of the present invention and such is not a prerequisite for enablement.

The Examiner discusses further that in his personal judgment there is no correlation between the instantly claimed bioresonance spectrum and those described in the prior art. Appellant submits the following in response to such statement.

The general method aims at a positive engagement with the bioresonance of the body, therefore it is named "bioresonance therapy". In this respect the Examiner is correct in that "bio" refers to biology. Said engagement shall be reached by interference of the body's resonance with a resonance spectrum from outside of the body. If this spectrum

derives from a medical compound the spectrum itself may be named a "resonance spectrum" because biology was not involved as yet (analogous to an NMR-spectrum, for example). To underline the basic similarities of the spectra that enable both to interfere, also the spectrum of a mere medical compound was termed "bioresonance-spectrum" by applicant herein. To prevent further confusion the applicant agrees that the term "bioresonance" in connection with the resonance of medical compounds is the same as "resonance".

Rejections 35 USC §102

Regarding the prior art rejections, claim 1 is directed to a magnetic tape comprising the bioresonance spectrum of a medical compound being generated in the frequency range of 1 Hz to 150 kHz. Unlike the present invention Berner discloses a magnetic foil sheet for biophysical therapy comprising a plastic matrix, magnetic particles and salts (as medical compounds). Appellant submits that these are profoundly distinct technologies and the subject matter of each is quite different. Berner does not disclose or suggest any recording of a resonance spectrum of a medical compound, which – according to the instant invention – renders it possible to evolve medical effects without the actual presence of the compound itself. The waves used corresponding to Berner are generated through a concomitant action of a static magnetic field (absent in the instant invention), cosmic radiation (not of importance for the instant invention) and the medical compound itself (not present in the instant invention). The imperative presence of the medical compound in Berner's foil sheets distinguishes both inventions. Moreover, not only the constituents of

the respective inventions quite different but the waves are self-evidently different primarily because they are generated in different manners.

With respect to the rejection of claims 1, 3 and 5 as being anticipated by Whitson-Fischman, appellant respectfully disagrees with the position taken by the Examiner in rejecting these claims. According to the Examiner, Whitson-Fischman discloses a topical patch comprising a homeopathic medicament and a magnetically permeable ingredient that is magnetized. The invention disclosed by Whitson-Fischman differs therefore profoundly from the instant invention. The claims herein are directed to a magnetic tape comprising the bioresonance spectrum of a medical compound being generated in the frequency range of 1 Hz to 150 kHz. The magnetical patch corresponding to Whitson-Fischman is "made of a porous material such as sintered metal capable of absorbing a therapeutic amount of homeopathic medicament" (column 6, line 67 – column 7, line 2). Further, a unipolar magnetic charge is then imparted to the metallic core of the patch (column 7, lines 9-11). Whitson-Fischman fails to teach recording of a bioresonance spectrum of a medical compound generated in the frequency range of 1 Hz to 150 kHz, or any use of a magnetic tape. The patch described by Whitson-Fischman has nothing in common with the pharmaceutical administration form described and claimed in the present application.

Appellant respectfully disagrees with the Examiner's rejection of claims 1 and 3-5 as anticipated by Dillinger. Appellant cannot follow the Examiner's arguments because Dillinger discloses some frequencies and Dillinger teaches about bioresonance, but

Dillinger does not teach the storage of the bioresonance spectrum of a medical compound on a magnetic tape for use of the magnetic tape as the pharmaceutical administration form.

Dillinger teaches that stored information must be reconverted by a described apparatus and oscillations generated this way can be administered to a patient via an electrode. The complete system is therefore profoundly different from the instant invention and not even suggestive of the instant invention. To the contrary Dillinger teaches away from the present invention by using a complicated apparatus to administer the medication to the patient as opposed by the instant invention where conventional videotapes and the like may be easily adhered to the body with conventional band-aids, for examples. Also, with the present invention the patent may take the medication whenever and wherever necessary without need of extensive equipment.

Appellant respectfully submits that claims 1 and 3-5 are in proper form and in full compliance with 35 USC §112, first and second paragraphs, and further that claims 1 and 3-5 define patentable subject matter which is not anticipated by the prior art of record. Specifically, these claims distinguish over Berner, Whitson-Fischman, Dillinger, for the reasons expressed above.

CONCLUSION

In view of the above argument, it is submitted that claims 1 and 3-5 are indeed definite and patentable over the prior art, and it is respectfully requested that the rejection of these claims be reversed.

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

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RMB/alh/206499
Attachment: APPENDIX

APPENDIX

CLAIMS ON APPEAL
Application Serial No. 09/214,047
Filed July 12, 1999

1. Pharmaceutical administration form in the form of a magnetic tape as an electromagnetic memory comprising the bioresonance spectrum of a medical compound being suited to have direct effect on a biological receptor system, said spectrum being generated in the frequency range of 1 Hz to 150Hz, amplified and recorded on said magnetic tape.

3. Administration form according to claim 1, characterized in that the magnetic tape (10) is adhered to a skin well-tolerated adhesive tape (12) whose projecting marginal strips (14, 16) are suited to be adhered to the skin of a patient.

4. Method for the manufacture of a pharmaceutical administration form of a medical compound which is suited to have direct effect on a biological receptor system, comprising the steps of putting the medical compound in an resonator vessel, generating a bioresonance signal of the medical compound continuously generated by means of a frequency generator having a frequency range of 1 Hz to 150 kHz, amplifying the bioresonance signal by a predetermined factor, and storing the amplified bioresonance signal on an electromagnetic memory.

5. Therapeutical method for the treatment of a diseased state of a patient, comprising the steps of applying a magnetic tape as an electromagnetic memory to the skin of a patient, said tape comprising a bioresonance spectrum of a medical compound in a predetermined amplification, said spectrum being generated on the frequency range of 1

Hz to 150 Hz, amplified and recorded on said magnetic tape whereby the medical compound is applied for elimination of diseased state.